



State of Washington
DRAFT
REPORT OF EXAMINATION
FOR WATER RIGHT CHANGE

Add Point of Diversion

PRIORITY DATE
1926 (class 64)

WATER RIGHT NUMBER
Walla Walla River Adjudicated Surface Water Certificate No. 828

MAILING ADDRESS
James Pritchard, Jr.
Pauline Pritchard
38 Seven Mile Road
Walla Walla, Washington 99362

Total Quantity Authorized for Diversion

MAXIMUM DIVERSION RATE
0.028

UNITS
CFS

ANNUAL QUANTITY (AF/YR)
5.5

Purpose

PURPOSE
Irrigation

DIVERSION RATE
0.0182 CFS from 04/01 to 07/01
0.014 CFS from 07/01 to 10/01
0.028 CFS from 10/1 to 04/01*

ANNUAL QUANTITY (AF/YR)
5.5

*when allowed in accordance with the Walla Walla Adjudication

IRRIGATED ACRES
ADDITIVE
1.4

PUBLIC WATER SYSTEM INFORMATION
WATER SYSTEM ID
CONNECTIONS

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Walla Walla	Mill Creek	Walla Walla River	32-Walla Walla

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Mill Creek Pump station	370716310037	7 N.	37 E.	16	SE¼SW¼	46.0815°	-118.1899°

Datum: NAD83/WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

370716310037

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Lot 1 of that certain Short Plat recorded October 30, 1996 in Book 3 of Short Plats at Page 111 as Auditor's File No. 9610922 of Official Records of Walla Walla County. Situated in the County of Walla Walla, State of Washington.

REPORT OF EXAMINATION FOR WATER RIGHT CHANGE

Proposed Works

Pump station, mainline and handlines

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Begun	November 1, 2016	November 1, 2017

Measurement of Water Use

How often must water use be measured?	Monthly
How often must water use data be reported to Ecology?	Annually (Jan 31)
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (cfs)

Provisions

The instantaneous quantities (Qi) shall be limited to a proportion share (0.0182 CFS from April 1 to July 1; 0.014 CFS from July 1 to October 1; 0.028 CFS from October 1 to April 1, when allowed in accordance with the Walla Walla Adjudication) unless a shared water use agreement is approved by the Walla Walla Water Master. If approved, water use shall be limited to the agreement, not to exceed 0.107 cfs from April 1 to July 1; 0.08 cfs from July 1 to October 1; and 0.160 cfs in October 1 to April 1 when allowed under the adjudication.

When the supply of water for irrigation purposes from April 1 to October 1 is insufficient in the Walla Walla Valley to fill any right contained in the foregoing schedule, the owner of such right is entitled to divert water during the period of October 1 to April 1.

Measurements, Monitoring, Metering and Reporting

An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Department of Fish and Wildlife Requirement(s)

The intake(s) must be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. <http://wdfw.wa.gov/about/contact/>

No dam or weir may be constructed in connection with this diversion.

Water Use Efficiency

The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

Proof of Appropriation

The water right holder must file the notice of Proof of Appropriation of water (under which the certificate of change is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate of change will reflect the extent of the project perfected within the limitations of the water right. Elements of a proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials, will have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

Real Estate Excise Tax

This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions, and therefore will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project. Phone: (360) 570-3265. The mailing address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia WA 98504-7477 Internet: <http://dor.wa.gov/>. E-mail: REETSP@DOR.WA.GOV.

Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application for change to Walla Walla River Adjudicated Surface Water Certificate No. 828, subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Ste 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this day of 2014.

Keith L. Stoffel, Section Manager

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

INVESTIGATOR'S REPORT

Dan Tolleson, Department of Ecology

Water Right Control Number CS3-*28828J@2

Walla Walla River Adjudicated Surface Water Certificate No. 828

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number CS3-*28828J@2 (Walla Walla River Adjudicated Surface Water Certificate No. 828). They propose to add one point of diversion to their portion of Walla Walla River Adjudicated Surface Water Certificate No. 828 (WWAC 828).

EXISTING Water Right Attributes

Water Right Owner:	Harry Gilkerson
Priority Date:	1/1/1926
Place of Use	SW¼ of Section 16, T. 7 N., R. 37 E.W.M., less land sold

County	Waterbody	Tributary To	WRIA
Walla Walla	Mill Creek	Walla Walla River	32-Walla Walla

Purpose	Diversion Rate	Annual Quantity (Af/Yr)
Irrigation of 8 acres	0.107 CFS from 04/01 to 07/01	40
	0.080 CFS from 07/01 to 10/01	
	0.160 CFS from 10/1 to 04/01	

Source Name	Parcel		Twp	Rng	Sec	QQ Q	Latitude	Longitude
Mill Creek			7 N.	37 E.	16	NW¼SW¼		
Mill Creek			7 N.	37 E.	16	NE¼SW¼		

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

NOTE: A certificate of Change was issued to Michael Cheatham on March 13, 2014 for a portion of WWAC 828. It issued for a maximum of 0.03 cfs, 5.72 acre feet for the seasonal irrigation of 1.48 acres. The place of use is located within the original and is as follows: Lots A and B of amended Rex short plat recorded May 9, 1994 in volume 2 of short plats at page 276, under Auditors file No. 9405563, records of Walla Walla County, Washington, lying north of Titus Creek.

REQUESTED Water Right Attributes

Applicant Name:	James and Pauline Pritchard
Date of Application:	11/9/2004
Place of Use	Lot 1 of that certain Short Plat recorded October 30, 1996 in Book 3 of Short Plats at Page 111 as Auditor's File No. 9610922 of Official Records of Walla Walla County. Within portion of SW¼ of Section 16, T. 7N., R. 37 E.W.M.

County	Waterbody	Tributary To	WRIA
Walla Walla	Mill Creek	Walla Walla River	32-Walla Walla

Purpose	Diversion Rate	Annual Quantity (Af/Yr)
Irrigation of 1.4 acres	0.0182 CFS from 04/01 to 07/01	7
	0.014 CFS from 07/01 to 10/01	
	0.028 CFS from 10/1 to 04/01	

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Mill Creek Pump station	370716310037	7 N.	37 E.	16	SE¼SW¼	46.0815°	-118.1899°

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

Legal Requirements for Requested Change

The following is a list of requirements that must be met prior to authorizing the proposed change.

Public Notice

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Walla Walla Union-Bulletin on August 16th and 23rd, 2006 and no protests were received.

Consultation with the Department of Fish and Wildlife

The Department of Ecology must give notice to the Department of Fish and Wildlife of applications to divert, withdraw or store water. This notice was submitted via email on 10/2/2013 to Steve Boessow and a reminder was sent on 11/18/2013, with a 30 day notice for comment. No response was received, but the project will be required to follow the hydraulic code (Chapter 77.55) and fish screen statutes (RCW 77.57).

State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- It is a groundwater right application for more than 2,250 gallons per minute;
- It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);

- (e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

Water Resources Statutes and Case Law

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

The Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. *R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp*.

RCW 90.14.140(1)(l) states that a water right is not relinquished from nonuse while waiting for a final determination from the department of ecology on a change application filed under RCW 90.03.250, 90.03.380, or 90.44.100.

INVESTIGATION

In considering the proposed application, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) other water rights, permits, and claims; (3) USGS topographic maps and aerial photographs; (4) diversion works and place of use; (5) Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32 and Watershed Planning; (6) State of Washington Irrigation Guide (Natural Resources Conservation Service 1997); (7) Walla Walla River Adjudication; and (8) discussions with Department of Ecology regional program staff.

A field investigation was conducted, by Dan Tolleson, with James Pritchard on March 26, 2014. The project is located approximately four miles east of Walla Walla, Washington. The water right is located in the Walla Walla Basin, which is managed under Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32.

This Certificate, originally authorized two points of diversion within the NE¼SW¼ and the NW¼SW¼ of Section 16, T. 7 N., R. 37 E.W.M. The original points of diversion have been moved around over the years due to the various channel changes of Mill Creek and Titus Creek. Neither of these original diversions authorizes the pump station proposed by the Pritchards.

The proposed point of division is intended to be located directly downstream of Seven Mile bridge within the SE¼SW¼ of Section 16, T. 7N, R. 37 E.W.M. Currently, the diversion is not in use and has mostly been removed. They propose to reconstruct a new diversion at this point with all new equipment sized to provide water for Mr. and Mrs. Pritchard's lot only. A flow meter will need to be installed at the proposed pump station in accordance with WAC 173-173. In addition, a fish screen is required for the pump station in accordance with Department of Fish and Wildlife screening criteria

(pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Contact the Department of Fish and Wildlife, at 600 Capitol Way N, Olympia, WA 98501-1091, Attention: Habitat Program or by phone at (360) 902-2534, if you have questions about screening criteria.

The authorized place of use is described as the SW¼ of Section 16, T. 7 N., R. 37 E.W.M. The applicant owns a 3.32 acre lot on the eastern edge of the place of use, south of Mill Creek Road and north of Mill Creek. This parcel of land has a house, outbuildings and is bisected by Titus Creek which is sometimes referred to as a side channel of Mill Creek. The majority of the rest of the place of use is pasture land and yard. This change is only proposed to be for the Prichard's portion of the place of use.

According to Mr. Pritchard, water use for the house and the immediate yard within the place of use are provided from a domestic well under the exemption (RCW 90.44.050). The exemption only allows for a maximum of one-half acre of lawn/garden for irrigation.

History of Water Use

Walla Walla River Adjudicated Surface Water Certificate No. 828 was issued in 1929 under the adjudication. An application for change was filed on this right in 2000 and a decision was issued in a Report of Examination (ROE) dated 9/29/2004. This decision essentially determined the water right was still in use on various parts of the place of use. In part, this report determined that 1.4 acres had historically been irrigated on the lot now owned by Mr. and Mrs. Pritchard. In addition, the report determined that the then used point of diversion for Pritchard's lot was not authorized. This applicant for change was received 11/9/2004 as a result of this determination in the Report of Examination dated 9/29/2004.

Aerial photographs were used to help verify the extent of development, historical and beneficial use of Mr. and Mrs. Pritchard's portion of this water right. Prior to 2004, approximately 1.4 acres were irrigated within their lot (known as Lot 1). This is consistent with the previously issued Report of Examination dated 9/29/2004. After 2004, irrigation under the surface water right was discontinued on Lot 1. According to the applicant, they were told that irrigation must cease until a decision was issued on this application for change. Since this change application was accepted prior to five years of nonuse, the 1.4 acres of irrigation on the Pritchard's lot has not been relinquished in accordance with RCW 90.14.140(1)(I) and is available for change.

It is estimated that the maximum instantaneous quantities authorized under this right were still being used when last irrigated. Mr. and Mrs. Pritchard's proportionate share of the instantaneous quantity of the water is 0.0182 CFS (8.2 gpm) from 04/01 to 07/01, 0.014 CFS (6.3 gpm) from 07/01 to 10/01 and 0.028 CFS (12.6 gpm) from 10/1 to 04/01. The diversion shall be limited to these instantaneous quantities unless a shared water use agreement is approved by the Walla Walla Water Master. If approved water use shall be limited to the agreement, not to exceed 0.107 cfs from April 1 to July 1; 0.08 cfs from July 1 to October 1; and 0.160 cfs in November and March when allowed under the adjudication. The proposed pump station will need to be sized accordingly.

The maximum authorized water duty of this certificate is 5 acre-feet per year, per acre. According to the adjudication 4.2 acre-feet per acre is the maximum allowed when water is available during the regular irrigation season, which is authorized from April 1 to October 1. If a full quantity of water is not available during the regular irrigation season, then water may be diverted from October 1 to April 1 up to a maximum of 5 acre-feet per acre. Historically, this right was used to irrigate a variety of crops but

with the irrigation of pasture being the most common. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that 2.9 acre-feet, per acre, for pasture is required in the Walla Walla area. At a 75% efficiency rate of application, the maximum water duty, for the crop listed above, is 3.9 acre-feet per year, per acre. This results in an allocation of 5.5 acre-feet per year for the irrigation of 1.4 acres.

This water right has a junior priority date in comparison to other rights within this basin and is subject to regulation in dry years. This means that the water right maybe turned off in dry years.

Proposed Use

The applicants propose to add one point of diversion to supply water for their lot.

Other Rights Appurtenant to the Place of Use

A review of Ecology records was conducted for existing water right certificates, permits, and claims in the area surrounding the project. The search focused primarily on Section 16, T. 7 N., R. 37 E.W.M. The review of Ecology records shows one water right appurtenant to the authorized place of use, which is as follows:

Walla Walla River Adjudicated Certificate No. 459 authorizes up to 0.48 cubic feet per second, for the irrigation of 24 acres, within the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 16, T. 7 N., R. 37 E.W.M. According to the ROE dated 9/29/2004 this water right is actually used in the portion of the legal description South of Mill Creek. Therefore, it is not appurtenant to the lands owned by Mr. and Mrs. Prichard. A portion of this right has been put into the Walla Walla Partnership Bank.

Impairment Considerations

"Impair" or "impairment" means to 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, not including earlier filed applications (HB 1832); and/or 2) to prevent the beneficial use of the water to which one is entitled; and/or 3) to adversely affect the flow of a surface water course at a time when the flows are at or below instream flow levels established by rule (POL-1200); and/or 4) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (WAC 173-150). Demonstration of impairment would require evidence of a substantial and lasting or frequent impact reflecting such conditions.

This application is requesting authorization to add a point of diversion to Walla Walla River Adjudicated Certificate No. 828. The exact locations of the originally authorized points of diversion are unknown due to the changes in the flows of Mill Creek and Titus Creek. This uncertainty stems from the fact that this is historically an area of changing stream channels and has been referred to in some documents as the upper reaches of Titus Creek or referred to as Mill Creek and its side channels. This area of braided channels and ponds was referred to as Mill Creek in the Adjudication, since it appears that all the channels were considered the same source of water. This determination that the major side channels and ponds in the area are part of Mill Creek is consistent with the Report of Examination dated 9/29/2004. The currently recognized points of diversion according to the 2004 ROE are as follows:

Diversion 1 – 1010 feet east and 1935 feet north of the Southwest corner of Section 16 (Lot D of Rex

Short Plat) and Diversion 2 – 1735 feet north and 1745 feet east of the southwest corner of Section 16 (Lot A of Rex short plat).

The proposed point of diversion is located just to the southeast of the authorized points of diversion on what is currently the main channel of Mill Creek. This site was used off and on in the last 20 or so years as an unauthorized source for the Prichard lot and several other lots just to the west. Use of this unauthorized point of diversion did not result in any complaints of impairment. There are no authorized points of diversion between the existing and proposed pump stations. This change is in the general area of the originally authorized diversions and is the same source of water. Therefore, this change is not anticipated to cause any impairment to existing rights.

Consideration of Protests and Comments

No protests were filed against this application.

Conclusions

In conclusion, there is a water right available for change under Walla Walla River Adjudicated Certificate No. 828. In accordance with Chapters 90.03 RCW, approval of this application to add a point of diversion will not enlarge the quantity of water historically authorized, nor will it impair existing rights provided the terms and conditions above are followed.

The amount of water recommended is a maximum limit that shall not be exceeded, and the water user may only use that amount of water within the specified limit that is reasonable and beneficial. This authorization does not increase in any way the original amounts authorized by the certificate.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed above.

Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

0.0182 CFS from 04/01 to 07/01

0.014 CFS from 07/01 to 10/01

0.028 CFS from 10/1 to 04/01 (when allowed in accordance with the Walla Walla Adjudication)

5.5 acre-feet per year

Irrigation of 1.4 acres

Point of Diversion

SE¼SW¼ of Section 16, Township 7 North, Range 37 E.W.M.

Place of Use

As described on Page 1 of this Report of Examination.

Dan Tolleson, Report Writer

Date

If you need this publication in an alternate format, please call the Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.